Supreme Court, U. S.
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No. 80-705

IN THE

Supreme Court of the United States

RODELL GRANT, *et al.*,
Petitioners,
vs.
OWENS-CORNING FIBERGLAS CORPORATION
and
INSULATION AND PRODUCTION WORKERS
LOCAL UNION NO. 1,
and
TEAMSTERS LOCAL NO. 541,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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I. QUESTIONS PRESENTED

The Petition for Certiorari raises four issues:

(1) Whether Respondent Insulation and Production Workers Union, Local Union No. 1, ("IPW") owed Petitioners a duty of fair representation?

(2) Whether Respondent Teamsters Local No. 541 ("Teamsters") violated its duty of fair representation to Petitioners by failing to adequately investigate Petitioners' grievance?

(3) Whether the district court properly disposed of this matter by means of summary judgment?

(4) Whether the district court and the court of appeals erred in refusing to allow Petitioners to amend their complaint to allege a breach of duty of fair representation by the Respondent unions for failing to negotiate a better collective bargaining agreement that would have provided Petitioners with the rights they seek?

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II. STATEMENT OF THE CASE

The facts stated in the Petition for Certiorari are generally accurate with two exceptions. First, the petition refers to a side agreement entered into between Owens Corning Fiberglas Corporation ("OCF") and the Insulation and Production Workers Union on July 29, 1971, and goes on to state at pages 4-5 that this side agreement "granted petitioners the exact seniority right that they claimed through the filing of the written grievance." As will be shown more fully herein, this statement is inaccurate.

Second, on page 5, the Petition for Certiorari states "Respondent Workers [IPW] received notice of all written grievances filed." There is no evidence in the record to support this statement, and furthermore, as will be shown more fully herein, this statement is both irrelevant and inaccurate.

The material facts may be stated as follows:

Owens Corning Fiberglas Corporation is an employer engaged in interstate commerce and has operated a plant in Kansas City, Kansas for over thirty years. The plant is divided into four departments — production, maintenance, power house, and warehouse. Some sixteen unions, including Respondent IPW and Respondent Teamsters, represent employees at the Kansas City plant. Prior to 1972, there were no jurisdictional lines of authority between the unions, but beginning in April, 1972, the company and the unions agreed upon jurisdictional lines of representation among the unions so that each union represented an identified group of employees. It was agreed that Respondent IPW would represent employees in the production department and that Respondent Teamsters would represent certain employees in the maintenance department.

All Petitioners had worked in the production department and had bid for and received transfers to the maintenance department. At all times materiai hereto Petitioners were employed in the maintenance department in jobs within the jurisdictional representation of Respondent Teamsters. At no time since 1972 have Petitioners been employed in jobs within the jurisdictional representation of Respondent IPW.

On November 25, 1974, Petitioners were notified that due to adverse economic and business conditions they were being furloughed from their jobs in the maintenance department. Petitioners sought to exercise their seniority to transfer to their former jobs in the production department and "bump" or displace less senior employees in that department, thereby avoiding furlough. Respondent Owens Corning Fiberglas Corporation denied that request on the basis that the controlling provisions of the collective bargaining agreement between the company and the unions prohibited such a transfer. Petitioner Barns Parker, acting on behalf of and at the express direction of the remaining Petitioners, requested Respondent Teamsters to

file a grievance on Petitioners' behalf. Respondent Teamsters did so and pursued the grievance through each step of the contractual grievance process, including review by appropriate corporate officials. Petitioners, through Petitioner Barns Parker, orally requested Respondent Teamsters to take the grievance to arbitration. Respondent Teamsters refused, explaining to Petitioner Parker that it did not feel that the contractual language supported the grievance and that there was no reasonable prospect for winning the arbitration case. Petitioner Parker testified that he disagreed with the union's interpretation of the collective bargaining agreement but that he was satisfied that Respondent Teamsters had not acted in bad faith, arbitrarily or capriciously towards him and the other Petitioners. He characterized the dispute between him and the Respondent Teamsters as a mere difference of opinion over the merits of the grievance.

In July 1971, prior to the establishment of jurisdictional lines of representation among the unions at the Kansas City plant, Respondent Owens Corning Fiberglas Corporation and Respondent IPW entered into a side agreement allowing certain employees who had transferred from the production department to the maintenance department to retain seniority and job rights in the production department in the event of furloughs. By its terms, this side agreement (1) was limited to those persons in the maintenance department who continued to pay dues to Respondent IPW, and more importantly, (2) expired in April, 1972. It is undisputed that this side agreement did not apply to Petitioners since none of them continued to pay dues to Respondent IPW and since at the time of the furlough (November, 1974) the side agreement had been defunct for more than two years.

Respondent Teamster was unaware of the existence of this side agreement between the company and Respondent IPW. Likewise, Respondent IPW was unaware of Petitioners' grievance arising out of their furlough in November, 1974.

III. ARGUMENT

A. Petitioners Have Apparently Abandoned Any Claim Against Respondent Owens Corning Fiberglas Corporation

Originally, Petitioners claimed that Respondent Owens Corning Fiberglas Corporation breached the collective bargaining agreement by not allowing them to transfer to the production department and that the Respondent unions breached their duties of fair representation by refusing to take Petitioners' grievance to arbitration. The district court dismissed the fair representation claims against the Respondent unions on the basis that the undisputed facts showed that Respondent IPW owed Petitioners no duty of fair representation and that Respondent Teamsters did not act arbitrarily, capriciously or in bad faith in refusing to arbitrate Petitioners' grievance. The district court then dismissed the breach of contract claim against Respondent Owens Corning Fiberglas Corporation on the basis that the contractual grievance procedure was Petitioners' exclusive remedy against the company except where Petitioners could establish that the Respondent unions had rendered that remedy ineffective by failing to fairly and adequately represent Petitioners.

On appeal to the Tenth Circuit, Petitioners continued to maintain that Respondent Owens Corning Fiberglas Corporation had breached the collective bargaining agreement by furloughing plaintiffs. The court of appeals, however, denied this claim for substantially the same reason as the district court.

The Petition for Certiorari raises no issue with regard to Petitioners' claim that Respondent Owens Corning Fiberglas Corporation breached the collective bargaining agreement by furloughing them in 1974. Therefore, it is respectfully submitted that this claim has been abandoned and that therefore this Respondent is only tangentially affected by the Petition for Certiorari.

B. The Petition For Certiorari Is Procedurally Defective.

The Petition for Certiorari is based on the argument that the court of appeals decided a federal question in a way in conflict with applicable decisions of this Court. Rule 19, Revised Rules of the Supreme Court of the United States. As to the fourth issue raised by the petition (i.e., the propriety of remand for the purpose of alleging that the Respondent unions breached their duty of fair representation by failing to negotiate a better collective bargaining agreement) the petition cites no applicable decision by this Court from which the court of appeals allegedly departed. This omission is due to the fact that there is no authority for the proposition that a union's duty of fair representation requires it to satisfy the demands of every employee to the point of negotiating a collective bargaining agreement that provides all rights and benefits sought by any employee within the bargaining unit. Certainly if the Court were to recognize or create such a duty, that action would have a radical effect on collective bargaining. In essence, every union would be required to negotiate until it had achieved the demands of all its members, a process that would most likely be never ending.

Further, to the extent that Petitioners argue that the Respondent unions had a duty to negotiate a better collective bargaining agreement, Petitioners tacitly acknowledge that Respondent Teamsters was correct when it informed them that under the collective bargaining agreement as it existed in 1974, their grievance lacked merit.

Based on the above and because Petitioners have not complied with the requirements of Rule 19, Respondent submits the Petition for Certiorari is procedurally defective insofar as the fourth issue is concerned and that the Petition for Certiorari presents nothing for the Court's consideration in this regard.

C. Respondent Insulation And Production Workers Union Had No Duty To Represent Employers Outside Its Jurisdiction.

The Petition for Certiorari contends at page 7 that the decision of the court of appeals directly conflicts with applicable decisions from this Court, citing *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U.S. 192 (1944); *Ford Motor Company* v. *Huffman*, 345 U.S. 330 (1953) and *Vaca* v. *Sipes*, 386 U.S. 171 (1967).

The *Steele* decision involved a factual situation where the union represented all railroad employees in the fireman craft. The union refused, however, to accept black firemen as union members and proposed to the railroad that the black firemen be terminated in order that white employees might take their place. The court refused to contenance such conduct and held that the union had duty to represent all employees, without regard to race, within its jurisdictional unit or craft.

In *Huffman* the company and union negotiated a collective bargaining agreement that gave seniority credit to new employees for time those employees had served in the armed forces. Nonveteran employees challenged the agreement on the basis that the union had exceeded its authority in negotiating an agreement that favored certain employee groups (new employees) over others (nonveteran incumbents). The Court held that such compromises and the concomitant balancing of rights and interests of different groups of employees is the essence of collective bargaining. It was necessary for the union, in its acknowledged role as the statutory representative of all employees within the bargaining unit, to compromise the interests of some employees in order to achieve the greatest good for the greatest number.

Finally, in *Vaca* an employee sued his union for breach of the duty of fair representation by refusing to appeal his grievance to arbitration. The Court rejected the employee's claim, and held

that an employee has no absolute right to have each grievance processed through arbitration. Rather, a union may exercise discretion in selecting the grievances that it will arbitrate so long as the exercise of discretion is not tainted by arbitrary, bad faith, or discriminatory conduct by the union.

Taken separately or together, the above decisions do not hold that a union owes a duty of fair representation to employees outside its jurisdictional unit. On the contrary, these cases merely hold that a union must fairly and adequately represent all employees within its jurisdiction and may not refuse to represent any employee because of race, lack of union membership, personal animosity, or any other arbitrary or bad faith reason. Again, these decisions do not hold or indicate that a union has a duty of fair representation to employees working in a bargaining unit or department or job classification that is outside the union's jurisdictional line of representation.

There is no dispute that in this case Respondent IPW only represented employees within the production department and that none of the Petitioners were employed in that department. Accordingly, Respondent IPW did not represent Petitioners. This fact was clearly recognized by Petitioners when they went to and requested Respondent Teamsters to assist them in filing a grievance. At no time did Petitioners request Respondent IPW to file a grievance on their behalf or to otherwise assist them. Indeed, Respondent IPW was unaware of the existence of Petitioners' grievance. In light of the facts that Petitioners were employed in jobs outside Respondent IPW's jurisdictional line of representation and that Petitioners did not request Respondent IPW to participate in the grievance process, it is clear that this Respondent owed Petitioners no duty of fair representation.

D. The Argument That Respondent Teamsters Breached Its Duty Of Fair Representation By Failing To Adequately Investigate Petitioners' Grievance Is A Factual Matter That Is Not Appropriate For A Petition For Certiorari.

The undisputed facts showed that Respondent Teamsters vigorously represented Petitioners at all steps in the contractual grievance procedure but refused to take the case to arbitration based on Respondent's view that it could not prevail in the arbitration proceeding. The Petition for Certiorari maintains that Respondent Teamsters breached its duty of fair representation by failing to adequately investigate Petitioners' grievance and thereby discover the existence of the 1971 side agreement between Respondent Owens Corning Fiberglas Corporation and Respondent Insulation and Production Workers. The Petition for Certiorari correctly cites this Court's decision in *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), for the proposition that a union may breach its duty of fair representation by failing to adequately investigate charges against a union member. The decision of the court of appeals, however, in no way departs from the *Hines* ruling. The court of appeals merely held, as a matter of undisputed fact, that Respondent Teamsters had adequately investigated, prepared, and presented Petitioner's grievance and that the existence of the 1971 side agreement between Respondent OCF and Respondent IPW was irrelevant. Thus, Petitioners argument on this point merely contends that the court of appeals resolved a factual matter adversely to Petitioners and does not raise any legal question appropriate for a Petition for Certiorari.

E. This Case Was Appropriately Decided By Summary Judgment.

Both the district court and the court of appeals recognized that summary judgment should be granted only where there is no dispute as to any material fact and where taking all inferences arising from those facts and construing them most favorably to the nonmovant, it is clear as a matter of law that the moving party is entitled to judgment. The primary source of the undisputed facts upon which the case was dismissed was Petitioners' undisputed testimony to the effect that there was no arbitrary, bad faith, or capricious conduct by Respondent

Teamsters in failing to proceed to arbitration with their grievance and that the only complaint that Petitioners had with Respondent Teamsters' conduct was a difference of an opinion on the merits of their grievance. This Court has clearly and unequivocally stated that such differences do not, as a matter of law, amount to a breach of duty of fair representation. Specifically, when the Court articulated the extent of the duty of fair representation in *Vaca* v. *Sipes*, 386 U.S. 171 (1967), the Court explained the limits of that duty:

> "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary discriminatory, or in bad faith." 386 U.S. at 190.

Petitioners testified unequivocally that they were aware of no such conduct. Accordingly, summary judgment was appropriately granted.

Further, this Court has previously held, in denying certiorari, that

> "[O]rdinarily an application by a District Court of the Rules of Civil Procedure when affirmed by the Court of Appeals will not be reviewed by this Court."

Appalachian Power Co. v. *American Institute of Certified Public Accountants,* 80 S.Ct. 15, 4L Ed 2d 30, *cert. denied,* 361 U.S. 887 (1959). Here the district court, as affirmed by the court of appeals, merely applied Rule 56, F.R. Civ. P., and granted summary judgment in a situation where it affirmatively appeared to be warranted based on the undisputed facts and the unequivocal legal principles announced by this Court. As such, the case was appropriately decided on motion for summary judgment.

IV. CONCLUSION

For the foregoing reasons, Respondent Owens Corning Fiberglas Corporation respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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